



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-180 (Motor transportation, urban transportation.)**

Date last reviewed: **July 19, 2000**

Reviewer: **Mark Mullin**

Date current review completed: **June 3, 2003**

Briefly explain the subject matter of the document(s): **WAC 458-20-180 (Rule 180) explains the terms "motor transportation business" and "urban transportation business." The rule explains the application of public utility, business and occupation, and retail sales taxes to persons engaged in the business of motor or urban transportation.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
X		Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)



	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
X		Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is "yes" to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

The previous review of this rule indicates that there are no WTDs that provide information that should be incorporated into the rule. This reviewer believes that the following WTDs contain information that should be incorporated into the rule:

- **Det. No. 96-134, 16 WTD 102 (1996).** This determination provides guidelines for how to determine where a for-hire haul begins and ends. It also provides information helpful in determining whether a for-hire haul is subject to urban transportation or motor transportation public utility tax.
- **Det. No. 91-164, 11 WTD 337 (1992).** This determination provides information on the taxability of cabulances (i.e., vans equipped with wheel chair lifts).
- **Det. No. 90-280, 10 WTD 79 (1990).** This determination provides information regarding operations incidental to the urban transportation business for purposes of determining "gross income" subject to public utility tax.
- **Det. No. 90-126, 9 WTD 277 (1990).** This determination involves the taxability of the transportation of passengers by van to and from an airport when those passengers are involved in interstate airline travel. The information provided in this determination might make a useful example in a revised rule.
- **Det. No. 87-267, 4 WTD 11 (1987).** This determination provides information helpful in determining whether a for-hire haul is subject to urban transportation or motor transportation public utility tax.

The following ETA not identified in the previous review of this rule contains information that should be incorporated into Rule 180:



- **ETA 365.04.172 (Dump Truck Operators).** This document contains information about the tax applications for various activities engaged in by dump truck operators, including hauling for hire.

3. Additional information: Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

The rule contains information about the exemption provided by RCW 82.16.047 for amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. But instead of referring to the statutorily defined term "persons with special transportation needs," the rule refers to "elderly and the handicapped." The statutory definition of "persons with special transportation needs," however, encompasses more than just the elderly and handicapped. Thus, the rule should be clarified so that it refers to the statutorily defined term "persons with special transportation needs" and cites the statute that defines that term.

RCW 82.16.010(12) defines the term "gross income" as "the value proceeding or accruing from the performance of the particular public service or transportation business involved, *including operations incidental thereto . . .*" (Emphasis added.) Rule 180, however, provides that persons engaged in motor or urban transportation businesses

are taxable under the service and other activities classification upon gross income received from checking service, packing and crating, the mere loading or unloading for others, commissions on sales of tickets for other lines, travelers' checks and insurance, etc. and the transportation of logs and other forest products exclusively over private roads.

In discussing the above quoted provision of Rule 180, Det. No. 90-280, 10 WTD 79 (1990) states:

[T]he rule's language must be read so that it does not conflict with the broad language of RCW 82.16.010. Consequently, the services contemplated in Rule 180 and taxable at the higher service B&O tax rate cannot be ones which are performed as a part of the urban transportation or hauling activities, nor can they be ones which are "incidental to" the haul itself. The language must be read to mean that when persons engaging in the urban transportation business engage in the additional, separately-taxable business of offering services to customers who are not also cartage customers or of offering services to cartage customers which are not incidental to completion of a customer's haul, the income from these services is taxable at the higher rate.

This information from Det. No. 90-280, 10 WTD 79 (1990) should be incorporated into the rule.

This rule can be rewritten in a more clear and concise manner using the format now preferred by the Department.



4. Listing of documents reviewed: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

- **ETA 365.04.172 (Dump Truck Operators)**

Court Decisions:

- ***Convoy Co. v. Taylor*, 53 Wn.2d 439 (1959) (whether the trial court erred in holding that plaintiff's gross revenue derived from its transportation of automobiles by truck from its spur track in Seattle to dealers within this state does not violate the Commerce Clause of the U.S. Constitution).**

Board of Tax Appeals Decisions (BTAs):

- ***Dave Transp. Services, Inc. v. Dep't of Revenue*, BTA Docket No. 55579 (2001) (whether a private, for-profit transportation business is entitled to the exemption from the public utility tax under RCW 82.16.047 with respect to funds received under a contract with a public transit agency to provide transit services to disabled persons and others with special transportation needs).**
- ***Amboy Trucking Co. v. Dep't of Revenue*, BTA Docket No. 8800 (1974) (whether taxpayer's transportation of forest products was accomplished exclusively over "private roads," and therefore falls within the exception to the "motor transportation" classification of public utility tax).**

Appeals Division Decisions (WTDs):

- **Det. No. 01-167E, 21 WTD 272 (2002) (whether a public transit agency: (1) is exempt from public utility tax on income from the operation of a paratransit service; and (2) may deduct from its gross income amounts paid to a subcontractor for paratransit services when it reports no income from paratransit services).**
- **Det. No. 00-064, 19 WTD 1013 (2000) (whether income received by a for-profit company operating a paratransit service on behalf of a public transit agency is exempt from taxation).**
- **Det. No. 93-240, 13 WTD 369 (1994) (whether public utility tax was incorrectly imposed on motor transportation income because it involved a transaction in interstate and foreign commerce).**



- **Det. No. 93-142, 13 WTD 287 (1994)** (whether motor transportation public utility tax was properly assessed against taxpayer on the hauling of logs destined for export).
- **Det. No. 92-246R, 13 WTD 133 (1993)** (whether the income derived from hauling logs, destined for export, to a rafting facility is exempt from the motor transportation public utility tax).

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed): **None.**

5. Review Recommendation:

<u> X </u>	Amend
<u> </u>	Repeal/Cancel (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
<u> </u>	Leave as is (Appropriate even if the recommendation is to incorporate the current information into another rule.)
<u> </u>	Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

While there is no immediate need to amend Rule 180, the rule should be amended in the future as resources permit to incorporate information from the ETAs identified in this and the previous review of this rule. Consideration should be given to incorporating into this rule information contained in the determinations identified above in section 2 of this review. Also, the rule should be amended to address the issues identified above in section 3 of this review.

The previous review of this rule recommended incorporating pertinent information relating to transportation currently contained in WAC 458-20-175, 458-20-179, and 458-20-193D



into a single rule. This reviewer believes that this recommendation is too broad. However, to the extent that WAC 458-20-179 and 458-20-193D contain information relating to the transportation of persons or property for hire by motor vehicle, such information should be incorporated into Rule 180. Specifically, it may be beneficial to incorporate information regarding interstate transportation into Rule 180. This reviewer concurs with the rest of the recommendations contained in the previous review of this rule.

6. Manager action: Date: 7/08/03

AL Reviewed and accepted recommendation

Amendment priority:

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